

DRAFT TOWN CODE AMENDMENT

(Based on the Rhode Island Model Ordinance)

ADD NEW CHAPTER TO TOWN CODE.

Chapter 67. FLOOD PLAIN MANAGEMENT PROGRAM

Section 67-1. Statement of Purpose.

The purpose of this ordinance is to ensure public safety; minimize hazards to persons and property from flooding, to protect watercourses from encroachment, and to maintain the capability of floodplains to retain and carry off floodwaters. The (Community Name) elects to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended).

Section 67-2. Applicability.

The Special Flood Hazard Areas are herein established as a floodplain overlay district. The District includes all special flood hazard areas within the Town of Tiverton designated as Zone A, AE, AH, AO, A99, V, or VE on the Newport County Flood Insurance Rate Map (FIRM) and Digital FIRM issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The exact boundaries of the District shall be defined by the 100-year base flood elevations shown on the FIRM and further defined by the applicable Flood Insurance Study (FIS) report dated [insert date]. The FIRM and FIS report and any revisions thereto are incorporated herein by reference and are on file with the Planning Board.

Section 67-3. Administrative Provisions.

(a) *Permit required.* All proposed construction or other development within a Special Flood Hazard Area shall require a permit.

If the construction or other development within a Special Flood Hazard Area is not covered by a building or other approved permit application, a flood hazard development permit shall be required. The application for a flood hazard development permit shall be submitted to the Planning Board Administrative Officer and shall include:

1. The name and address of the applicant;
2. An address or a map indicating the location of the construction site;
3. A site plan showing location of existing and proposed structures, sewage disposal facilities, water supply facilities, areas to be cut and filled, and the dimensions of the lot;

4. A statement of the intended use of the structure;
5. A statement as to the type of sewage system proposed;
6. Specification of dimensions of the proposed structures;
7. The specific datum used for all elevations;
8. The elevation (in relation to mean sea level) of the lowest floor, including basement, and if the lowest floor is below grade on one or more sides, the elevation of the floor immediately above;
9. Base flood elevation data for all new, relocated or substantially improved structures;
10. The elevation (in relation to mean sea level) to which the structure will be floodproofed;
11. The description of the extent to which any watercourse will be altered or relocated as a result of the proposed development.

Prior to the issuance of a building or development permit, the applicant shall submit evidence that all necessary permits and approvals have been received from all government agencies from which approval is required by federal or state law.

A permit fee, which shall be established by Town Council resolution and based on the cost of the construction, shall be required to be paid to the Town of Tiverton and a copy of a receipt for the same shall accompany the application. An additional fee may be charged if the code enforcement officer and/or board of appeals needs the assistance of a professional engineer.

(b) *Disclaimer of Liability.* The degree of flood protection required by the ordinance is considered reasonable but does not imply total flood protection.

(c) *Severability.* If any section, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court, the remainder of the ordinance shall not be affected. Abrogation and Greater Restriction. This ordinance shall not in any way impair/remove the necessity of compliance with any other applicable laws, ordinances, regulations, etc. Where this ordinance imposes a greater restriction, the provisions of this ordinance shall control.

Section 67-4. Notification of Watercourse Alteration.

In a riverine situation, the Administrative Officer shall notify the following of any alteration or relocation of a watercourse:

City of Fall River, Massachusetts

Town of Westport, Massachusetts

Commonwealth of Massachusetts (DEP)

NFIP State Coordinator
Rhode Island Emergency Management Agency
645 New London Avenue

Cranston, RI 02920

NFIP Program Specialist
Federal Emergency Management Agency, Region I
99 High Street, 6th Floor
Boston, MA 02110

The carrying capacity of the altered or relocated watercourse shall be maintained.

Section 67-5. Use Regulations.

(a) *Reference to Existing Regulations.* The Special Flood Hazard Areas are established as a floodplain overlay district. All development in the district, including structural and non-structural activities, ~~whether permitted by right or by special permit~~ must be in compliance with the following:

Rhode Island State Building Code (SBC-1-2007 as established under Rhode Island General Law § 23-27.3);

Coastal Resources Management Program, Coastal Resource Management Council (RIGL § 46-23)

Freshwater Wetlands Act, Department of Environmental Management (RIGL § 46-23-6)

Minimum Standards Related to Individual Sewage Disposal Systems, Department of Environmental Management (RIGL § 46-12)

Any variances from the provisions and requirements of the above referenced state regulations may only be granted in accordance with the required variance procedures of these state regulations.

(b) *Other Use Regulations.*

- 1) Within Zones AH and AO on the FIRM, adequate drainage paths must be provided around structures on slopes, to guide floodwaters around and away from proposed structures.
- 2) Within Zone AO on the FIRM, new and substantially improved residential structures shall have their lowest floor at least as high as the FIRM's depth number above the highest adjacent grade and non-residential structures shall be elevated or flood-proofed above the highest adjacent grade to at least as high as the depth number on the FIRM. On FIRMs without a depth number for the AO Zone, structures shall be elevated or floodproofed to at least two feet above the highest adjacent grade.
- 3) In Zones A1-30 and AE, along watercourses that have a regulatory floodway designated on the FIRM or Flood Boundary & Floodway Map (insert map numbers showing floodways) encroachments are prohibited in the regulatory floodway which

would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

- 4) All subdivision proposals must be designed to assure that:
 - a.) such proposals minimize flood damage;
 - b.) all public utilities and facilities are located and constructed to minimize or eliminate flood damage; and
 - c.) adequate drainage is provided to reduce exposure to flood hazards.
- 5) Detached accessory structures in Zones A, AE, A1-30, AO, and AH (i.e., garages, sheds) do not have to meet the elevation or dry flood-proofing requirement if the following standards are met:
 - a.) The structure is no more than 100 square feet in size and has a value less than \$1000.
 - b.) The structure has unfinished interiors and must not be used for human habitation. An apartment, office or other finished space over a detached garage is considered human habitation and would require the structure to be elevated.
 - c.) The structure is used solely for parking of vehicles and/or limited storage.
 - d.) The accessory must be wet floodproofed and designed to allow for the automatic entry and exit of flood water.
 - e.) The accessory structure shall be firmly anchored to prevent flotation, collapse and lateral movement.
 - f.) Service facilities such as electrical, mechanical and heating equipment must be elevated or flood proofed to or above the base flood elevation.
 - g.) The structure must not increase the flood levels in the floodway.
- 6) Existing contour intervals of site and elevations of existing structures must be included on plan proposal.

(c) Base Flood Elevation and Floodway Data.

- 1) Floodway Data. In Zones A, A1-30, and AE, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.
- 2) Base Flood Elevation Data. Base flood elevation data is required for subdivision proposals or other developments greater than fifty (50) lots or 5 acres, whichever is the lesser, within unnumbered A zones.
- 3) Base Flood Elevations in A Zones. In the absence of FEMA BFE data and floodway data, the best available Federal, State, local, or other BFE or floodway data shall be used as the basis for elevating residential and non-residential structures to or

above the base flood level and for floodproofing non-residential structures to or above the base flood level.

Section 67-6. Definitions.

Unless specifically defined below, words and phrases used in this ordinance pertain to floodplain management, have the same meaning as they have in common usage and to give this ordinance it's most reasonable application.

Accessory Structure - A structure which is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure.

Area of Shallow Flooding- A designated AO, AH, AR/AO, AR/AH, or VO zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of Special Flood Hazard - see definition for "Special Flood Hazard Area".

Base Flood - The flood having a one (1) percent chance of being equaled or exceeded in any given year, also referred to as the one hundred (100) year flood, as published by the Federal Emergency Management Agency (FEMA) as part of a Flood Insurance Study (FIS) and depicted on a Flood Insurance Rate Map (FIRM).

Base Flood Elevation (BFE) - The elevation of the crest of the base flood or 100-year flood. The height, as established in relation to the North American Vertical Datum (NAVD) of 1988 (or other datum where specified), in relation to mean sea level expected to be reached by the waters of the base flood at pertinent points in the floodplains of coastal and riverine areas.

Basement - Any area of the building having its floor subgrade (below ground level) on all sides.

Building - see definition for "Structure".

Cost - As related to substantial improvements, the cost of any reconstruction, rehabilitation, addition, alteration, repair or other improvement of a structure shall be established by a detailed written contractor's estimate. The estimate shall include, but not be limited to: the cost of materials (interior finishing elements, structural elements, utility and service equipment); sales tax on materials, building equipment and fixtures, including heating and air conditioning and utility meters; labor; built-in appliances; demolition and site preparation; repairs made to damaged parts of the building worked on at the same time; contractor's overhead; contractor's profit; and grand total. Items to be excluded include: cost of plans and specifications, survey costs, permit fees, costs to correct code violations subsequent to a violation notice, outside improvements such as septic systems, water supply wells, landscaping, sidewalks, fences, yard lights, irrigation systems, and detached structures such as garages, sheds, and gazebos.

Development - Any man-made change to improved or unimproved real estate, including but not limited to the construction of buildings or structures; the construction of additions, alterations or substantial improvements to buildings or structures; the placement of buildings or structures; mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment; the storage, deposition, or extraction of materials; and the installation, repair or removal of public or private sewage disposal systems or water supply facilities.

Existing Manufactured Home Park or Manufactured Home Subdivision - A manufactured home park or manufactured home subdivision for which the construction of facilities for servicing the lots on which the manufactured home are to be affixed (including, as a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

Expansion to an Existing Manufactured Home Park or Existing Manufactured Home Subdivision - The preparation of additional sites by the construction of facilities for servicing the lots on which the manufacturing homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Federal Emergency Management Agency (FEMA) The federal agency that administers the National Flood Insurance Program (NFIP).

Flood or Flooding - A general and temporary condition of partial or complete inundation of normally dry land areas from either the overflow of inland or tidal waters, or the unusual and rapid accumulation or runoff of surface waters from any source.

Flood Insurance Rate Map (FIRM) - The official map of a community on which the Federal Emergency Management Agency (FEMA) has delineated both the special flood hazard areas (100-year floodplain) and the insurance risk premium zones applicable to a community. FIRM published after January 1990 may also show the limits of the regulatory floodway.

Flood Insurance Study (FIS) - The official study of a community in which the Federal Emergency Management Agency (FEMA) has conducted a technical engineering evaluation and determination of local flood hazards, flood profiles and water surface elevations. The Flood Insurance Rate Maps (FIRM), which accompany the FIS, provide both flood insurance rate zones and base flood elevations, and may provide the regulatory floodway limits.

Flood Proofing - Any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodway - The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot. For the purposes of these regulations, the term "Regulatory Floodway" is synonymous in meaning with the term "Floodway".

Functionally Dependent Use or Facility - A use or facility that cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities. The term does not include seafood processing facilities, long-term storage, manufacturing, sales or service facilities.

Highest Adjacent Grade (HAG) - The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic Structure - Any structure that is: (a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historic significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or (d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either: (1) By an approved state program as determined by the Secretary of the Interior or (2) Directly by the Secretary of the Interior in states without approved programs.

Lowest Floor - The lowest floor of the lowest enclosed area (including basement).

Manufactured Home - A structure, transportable in one (1) or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term also includes park trailers, travel trailers, recreational vehicles and other similar vehicles or transportable structures placed on a site for one hundred and eighty (180) consecutive days or longer and intended to be improved property.

Manufactured Home Park or Manufactured Home Subdivision - A parcel or contiguous parcels of land divided into two (2) or more manufactured home lots for rent or sale.

Market Value - Market value is the price of a structure that a willing buyer and seller agree upon. This can be determined by an independent appraisal by a professional appraiser; the property's tax assessment, minus land value; the replacement cost minus depreciation of the structure; the structure's Actual Cash Value.

New Construction - Structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

New Manufactured Home Park or Manufactured Home Subdivision - A manufactured home park or manufactured home subdivision for which the construction of facilities for servicing the lots

on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain regulations adopted by the community.

Recreational Vehicle - A vehicle which is: (a) built on a single chassis; (b) four hundred (400) square feet or less when measured at the largest horizontal projection; (c) designed to be self-propelled or permanently towable by a light duty truck; and (d) designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational, camping, travel, or seasonal use.

Regulatory Floodway - see definition for "Floodway".

Sheet Flow Area - see definition for "Area of Shallow Flooding".

Special Flood Hazard Area (SFHA) - The land in the floodplain within a community subject to a one (1) percent or greater chance of flooding in any given year. SFHAs are determined utilizing the base flood elevations (BFE) provided on the flood profiles in the Flood Insurance Study (FIS) for a community. BFEs provided on Flood Insurance Rate Map (FIRM) are only approximate (rounded up or down) and should be verified with the BFEs published in the FIS for a specific location. SFHAs include, but are not necessarily limited to, the land shown as Zones A, A1-30, AE, AO, AH, and the Coastal High Hazard Areas shown as Zones V, V1-30, and VE on a FIRM. The SFHA is also called the Area of Special Flood Hazard.

Start of Construction - For other than new construction or substantial improvements under the Coastal Barrier Resources Act (P.L. 97-348), includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, substantial improvement or other improvement was within one hundred and eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erections of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure - A walled and roofed building which is principally above ground, including a manufactured home, a gas or liquid storage tank, or other man-made facilities or infrastructures.

Substantial Damage - Damage of any origin sustained by a structure, whereby the cost of restoring the structure to its pre-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial Improvement - Any combination of repairs, reconstruction, rehabilitation, alterations, additions or other improvements to a structure, taking place within any twelve (12) month period, in which the cumulative cost equals or exceeds fifty (50) percent of the market value of the structure (§ 23-27.3-106.1). This term includes structures that have incurred "substantial damage", regardless of the actual repair work performed. For purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either: (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or (2) Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure".

Variance - A grant of relief by a community from the terms of the floodplain management ordinance that allows construction in a manner otherwise prohibited and where specific enforcement would result in unnecessary hardship.

Violation - Failure of a structure or other development to be fully compliant with the community's floodplain management ordinance. A structure or other development without required permits, lowest floor elevation documentation, flood-proofing certificates or required floodway encroachment calculations is presumed to be in violation until such time as that documentation is provided.

DELETION OF CURRENT PROVISIONS

TOWN CODE.

Chapter 18. Building and Building Regulations.

In ARTICLE III. "BUILDING PERMITS";

~~Sec. 18-58. Consideration of flood hazards when reviewing applications.~~

- ~~(a) The building inspector when reviewing applications for building permits, including the plans and specifications for the proposed construction, will review all building permit applications to determine if the proposed construction is consistent with the need to minimize flood damage.~~
- ~~(b) The building inspector shall review all building permit applications to determine if the site of the proposed construction is reasonably safe from flooding and to make recommendations for construction in all locations which have flood hazards in accordance with the requirements of the zoning ordinance.~~
- ~~(c) The building inspector, in his review of all applications for construction in flood hazard locations within the town, shall require the applicant to provide in his plans and specifications the information or certification required by the zoning ordinance.~~

APPENDIX A. ZONING ORDINANCE

ARTICLE XI. ~~SPECIAL FLOOD HAZARD AREAS~~ *Reserved*

~~Section 1. Applicability.~~

~~a. Notwithstanding any other provisions of this ordinance, the following regulations and restrictions shall apply within all areas designated as floodprone on the most current flood insurance rate map, Community Number 440012, published by the Federal Emergency Management Agency.~~

~~b. No amendments, modifications, codifications or other changes shall be made to this section without prior notification to the state coordinator of the federal Flood Insurance Program.~~

~~c. For the purposes of this article, the following terms shall have the following meanings:~~

~~(1) Manufactured home: A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" also includes park trailers, travel trailers and other similar vehicles placed on a site for longer than 180 consecutive days. For insurance purposes the term "manufactured home" does not include park trailers, travel trailers and other similar vehicles.~~

~~parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.~~

~~Section 2. Development permit requirements.~~

~~Within all areas designated as floodprone, as well as within 200 feet of all watercourses shown on the flood insurance rate map (FIRM) and the flood hazard boundary map (FHBM), the following requirements shall apply:~~

~~a. No proposed construction or other development, including placement of manufactured homes, shall proceed prior to the issuance of a development permit from the zoning officer. Such proposals shall be reviewed to ensure that:~~

~~(1) All such proposals are consistent with the need to minimize flood damage within the floodprone area;~~

~~(2) All public utilities and facilities such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damage;~~

~~(3) Adequate drainage is provided to reduce exposure to flood hazards.~~

~~b. All proposed new developments, including proposals for manufactured home parks and subdivisions, greater than 50 lots or five acres, whichever is the lesser, shall include~~

~~base flood elevation data with the development application.~~

~~e. No watercourse may be altered or relocated without approval from all appropriate local, state and federal agencies.~~

~~d. To ensure that the flood-carrying capacity within an altered or relocated watercourse is maintained, the following provisions shall be taken:~~

~~(1) Until a regulatory floodway is designated, no new construction, substantial improvements or other development, including fill, shall be permitted unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community;~~

~~(2) When flood data from any source, including the developer, is available to enable the community to designate a regulatory floodway:~~

~~(a) The regulatory floodway shall be selected and adopted on the principle that the area chosen for the regulatory floodway must be designed to carry waters of the base flood, without increasing the water surface of that flood more than one foot at any point;~~

~~(b) Encroachments shall be prohibited, including fill, new construction, substantial improvements and other development within the adopted regulatory floodway that would result in any increase in flood levels within the community during the occurrence of the base flood discharge;~~

~~(c) The placement of any manufactured homes shall be prohibited except in an existing manufactured home park or manufactured home subdivision within the adopted regulatory floodway.~~

~~e. All buildings shall be set back from a floodway for a distance of at least the average of the setbacks existing on similar improvements on plots within 200 feet. If there are no such improvements on the plots within 200 feet of the proposed building site, then the setback from the floodway shall be at least 30 feet. Accessory structures may, by special use permit, extend to the floodway. Authorized public and semipublic bodies may be permitted to erect structures within a floodway only when the most extenuating circumstances warrant the issuance of a special use permit.~~

~~f. No material shall be stored in floodprone areas which is likely to cause an obstruction, create a fire hazard or pollute the water during flood periods. Such material includes, but is not limited to, substantial quantities of lumber and other floatable materials, volatile materials, acids, poisons, liquids other than water and soluble materials.~~

~~g. Below the lowest habitable floor level of any structure within a floodprone area, reasonable provision shall be made for anchoring down those items customarily found out of doors, which are capable of floating in water for a prolonged period of time and~~

~~ordinarily not anchored. Such customary yard features shall include, but not be limited to, moveable structures and sheds, animal shelters, cages, feeders or dog houses, fuel containers, tanks, cylinders and cans, picnic benches, railroad ties, flower boxes and planters, barrels, refuse containers, storage boxes, pallets, tires and tubes, freezers and refrigerators, lobster and eel traps, boat hulls, docking and float materials, signs and stored vehicles.~~

~~h. All manufactured homes to be placed or substantially improved within zones A1-30, AH and AE shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood elevation, and the structure is securely anchored to an adequately anchored foundation system in accordance with the provisions of the Rhode Island Building Code.~~

~~Section 3. Velocity zone requirements.~~

~~Within zones V through V30, the coastal area subject to high velocity waters, including hurricane wave wash, as designated on the flood insurance rate map, the following regulations shall apply:~~

- ~~a. All new construction shall be landward of the reach of mean high tide.~~
- ~~b. The placement of manufactured homes shall be prohibited except in existing manufactured home parks and subdivisions.~~
- ~~c. The manmade alteration of sand dunes which would increase potential flood damages is prohibited.~~

~~Section 4. Variances.~~

~~The zoning board of review may grant relief from the provisions of this article in the case of a proven hardship in accordance with the standards for granting a use variance contained [in] article XVII. Variances granted under this section shall be noted on the property deed, and shall contain the following information:~~

- ~~a. Flood hazard zone designation and date of flood map.~~
- ~~b. Number in feet which the lowest habitable floor will be located in relation to the 100-year flood level.~~
- ~~c. A statement that flood insurance rates may increase accordingly.~~

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